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INFORMATIVE NOTE FROM THE GOVERNMENT OF ARGENTINA ON THE SITUATION OF HUMAN RIGHTS

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Permanent Mission of the
Republic of Argentina to the
Organization of American States

SG No.431 (7.2.0)/81

The Permanent Mission of the Republic of Argentina to the Organization of American States presents its compliments to the General Secretariat and requests that the attached document, entitled "Informative note from the Government of Argentina on the situation of human rights," be reproduced and distributed among the delegations of the member states as a document of the Preparatory Committee of the General Assembly.

The Permanent Mission of the Republic of Argentina to the Organization of American States again extends to the General Secretariat the assurances of its highest consideration.

Washington, D.C., September 30, 1981

TO THE GENERAL SECRETARIAT OF THE OAS

WASHINGTON, D.C.

INFORMATIVE NOTE FROM THE GOVERNMENT OF ARGENTINA ON THE SITUATION OF HUMAN RIGHTS

Washington, D.C., September 30, 1981

INFORMATIVE NOTE FROM THE GOVERNMENT OF ARGENTINA ON THE SITUATION OF HUMAN RIGHTS

1. The Government of Argentina discussed the situation of human rights at length in the document entitled "OBSERVATIONS AND CRITICISMS MADE BY THE GOVERNMENT OF ARGENTINA WITH REGARD TO THE REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA (APRIL 1980)" (OEA/Ser.P/AG/CP/doc.256/80). As its delegation announced at the Tenth Regular Session of the General Assembly of the OAS, the Government felt it appropriate to provide information directly to the member countries, through INFORMATIVE NOTES (document OEA/Ser.P/AG/doc.156 November 13, 1980, and OEA/Ser.P/AG/CP/doc.276, March 30, 1981).

2. Continuing this practice, the Government of Argentina is transmitting the third INFORMATIVE NOTE to the member states. This note contains an up-to-date picture of the situation in the Republic and its progress toward a solid, stable and representative democracy. The content of this note shows that the evidence confirms that, through the National Reorganization Process, the national authorities are carrying out their firm intention to maintain the fundamental rights and freedoms of man in full force.

3. Within that context, the Government of Argentina once again confirms its steadfast intention to defend the people and institutions of Argentina from indiscriminate terrorist aggression. A common phenomenon in today's world, terrorism surfaced early in Argentina, and was particularly severe.

4. To achieve the peace it now enjoys, the Argentine Nation was forced to deal with fully indoctrinated and armed organizations, whose objective was to use all the extremes of nihilistic violence to seize power and to destroy the essential values of the Nation. Today, the Argentine people have stronger institution and an honorary and independent judiciary.

5. Through the "INFORMATIVE NOTES," the Government of Argentina wishes to express its viewpoints on the progress in this area and, at the same time, its willingness to cooperate with the member states in effectively promoting human rights.

I. DEVELOPMENTS IN THE POLITICAL SITUATION

6. The second INFORMATIVE NOTE (document OEA/Ser.P/AG/CP/doc.276/81) stated that "the Armed Forces were forced to assume the country's political leadership. This was a moral obligation that was imposed by a total void in the power structure and by a state of internal upheaval brought about by widespread general violence which led inexorably to the country's disintegration. However, the ultimate purpose of that decision was to reestablish and make fully effective in Argentina ar authentic democracy." In that note, the member states of the OAS were informed of the stages already carried out under the National Reorganization Process, and of future plans as well.

7. In 1980, a dialogue began between the Minister of the Interior and individuals prominent in Argentina's political parties and other representative sectors of national life. On August 24, 1981, this dialogue took on definite momentum with a view to establishing the guidelines for the country's future institutionalization, through meetings held by the Minister of the Interior with officials of political organizations: the Radical Civic Union, the Progressive Democratic Party, and the Democratic Socialist Party. These events marked the beginning of a new stage in the Government's relations with political parties.

8. Since early September of this year, the National Government has had the "Guidelines of the Organic Law to Govern Political Parties and for the Legal Provisions to Govern their Inspection and Supervision," issued by the Military Junta. These, together with the "Supplementary Directive No. 2 of the Instrumental Bases for Political Action," show the Government's course of political action for the remainder of this year and the first half of next year.

9. The "Guidelines of the Military Junta to the National Executive Power (for discharge of Government action in the 1981-1984 period)," establish that one of the three major purposes of government action is "to establish the backbone of the nation," which involves the following:

a. Creation of the bases necessary to continue to develop actions whose purpose it is to establish a solid and stable political and institutional order tnat will make possible coexistence among all Argentines, based on an essential synthesis of the national identity.

b. The implementation of a political system based on responsible participation, which gives access to power to leaders qualified to exercise government with authority, capability, responsibility and adequate freedom of action; the essential institutions of a political system of this kind are the political parties.

10. "Supplementary Directive No. 2 on the Instrumental Bases for Political Action" establishes the strategy for the political field; in summary, the basis of the strategy is to organize timely preparation of the laws to govern the system of the political parties and their normalization.

11. The "Guidelines for the Organic Law to Govern Political Parties and for the Legal Provisions to Govern their Inspection and Supervision" contain general provisions to serve as the framework for the future legal instrument, thereby facilitating exchanges of views with the authorities of the political parties.

12. Finally, it must be pointed out that in this second phase of the Process, which began on March 29, 1981, men representative of their circumstances or occupation and, in many cases, politically active in various groups, have been incorporated into the ranks of the governing at all levels of government.

13. Approval of the statute to govern the political parties is planned for the second quarter of 1982, so that reorganization of the parties may begin at that same time next year. Further, the electoral system will also be reorganized, and plans are to analyze the Election Law in 1983.

II. THE INDEPENDENCE OF THE JUDICIARY IN ARGENTINA

14. Chapter IV of the document "OBSERVATIONS AND CRITICISMS MADE BY THE GOVERNMENT OF ARGENTINA WITH REGARD TO THE REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN ARGENTINA" (April 1980) (OEA/Ser.P/AG/CP/doc.256/80), contains a summary of the Judiciary Power. It should again be pointed out that the National Constitution of the Republic of Argentina specifies the need for independent judges to serve the purposes of justice; hence, magistrates retain their positions so long as their conduct is proper. This means that they cannot be removed from office, a factor intimately linked to their independence.

15. Further, the Basic Objectives of the National Reorganization Process reaffirm the "full legal effect of the juridical and social system," and to that end it is provided that judges cannot be removed from office. Without that provision, any notion of independence in judgment would be inoperative.

16. The National Reorganization Process also upholds the principle that a court ruling is just only when it is the result of that independent judgment. Reaffirmation of this principle was essential in order to rescue it from the chaos that prevailed in the Republic when the Armed Forces took over the reins of government on March 24, 1976.

17. In a speech inaugurating the Fourth Scientific Workshop on the Judiciary, given on September 11, 1980, the President at that time, (R.A.) Lieutenant General Jorge Rafael Videla stated the following: "...we know that the major juridical decisions, the development of legal precedent and all the traditions on this subject are based on a simple but fundamental principle: the independence of the Judiciary Power..."

18. On July 6, 1981, at the closing of the Third Meeting of the national and Provincial Judiciary Power, the President, (R.A.) Lieutenant General Roberto Eduardo Viola stated the following: "...it has been my intention to make a simple and clear statement of the position of the national Executive Power, which is none other than the unswerving commitment of the Process to final and inexorable establishment of a state of law. I repeat once again that I am very much convinced that an upright, swift, rational and independent judiciary is part of the foundation of this state of law. There is democracy only when there is freedom, and there is freedom only when the rule of law is in the hands of an efficient organization of justice, capable of insuring the citizenry of their fundamental rights..."

19. The political authority's observance of judges' decisions is in keeping with the principles and declarations concerning the independence of the Judiciary Power. By way of example, it is sufficient to cite three cases that have been the subjects of particular notoriety: Jacobo Timerman, María Estela Martínez de Perón and Benito Moya.

20. The previous documents presented by the Government of Argentina to the member countries of the OAS for consideration ("Observations and Criticisms...", first and second "Informative Note") have told how various traditional institutions in Argentina's legal system have had to be adapted to the special circumstances prevailing in the country, through jurisprudence developed to expand upon and define more accurately how those institutions are to function.

As for the remedy of habeas corpus, this Informative Note will analyze the position of the Supreme Court of Justice of the Nation with respect to those cases that have been submitted to it for judgment, beginning with those that concern individuals detained by order of the National Executive Power.

21. On August 5, 1976, in the "Lintridis, Moisés" case, the Supreme Court of Justice established that a writ of habeas corpus presented on behalf of an individual detained by order of the national Executive Power and that argues that the warrant does not stipulate the grounds for the arrest, is inadmissible if records indicate that proceedings were instituted against the appellant for acts intimately related to a subversive activity whose purpose is to upset domestic tranquility. Thus, the conclusion is that the decision of the National Executive Power cannot be disputed on the grounds of arbitrary conduct.

22. On August 9, 1977, the Supreme Court of Justice handed down a decision in the "Zamorano" case. It was a generic decision to the effect that the declaration of a state of siege on the grounds of Article 23 of the National Constitution is not subject to judicial review. What is subject to judicial review is the specific exercise of the exceptional powers of the President of the Nation with respect to constitutional freedoms. In the case under analysis, the Supreme Court of Justice held that the National Executive Power had acted in the exercise of its specific powers during the state of siege and that this is not subject to judicial review.

23. In December 1977, a ruling was handed down in the "Tizio" case. This involved a writ of habeas corpus filed on the grounds of the continuance of the arrest (which took place in 1976); the appellant argued that this constituted a form of punishment. Here the Supreme court of Justice, referring itself to the "Zamorano" case, held that the continuance of the arrest was not a punishment since the circumstances that caused the state of siege to be declared were still present and that the declaration of the state of siege was not subject to judicial review.

24. During July of 1978, in the "Timerman" case, the Supreme Court held that the powers that Article 23 of the Constitution confers upon the National Executive Power are exceptional in nature. It added that the Supreme court of Justice is a tribunal of constitutional guarantees and therefore it is its duty to establish whether the actions fo the National Executive Power are reasonable. It affirmed that although the state of siege has its own context and serves a useful purpose, it is an extreme and temporary remedy conceived so as to preserve and not to supplant the authority of the National Constitution.

In that same ruling it was established that the National Executive Power is duty-bound to provide sufficient information to the competent judge so that the latter may examine the extent to which the action was within reason, based on the correlation between the constitutional guarantee affected and the degree of internal disturbance, thereby determining whether the action taken by an authority is in proper proportion to the purposes sought through the declaration of the state of siege.

25. As for the exercise of the right to choose to leave the country, granted through Article 23 of the National Constitution, on November 16, 1976 the Supreme Court of Justice ruled in the "Ercoli, María Cristina" case that the right of option upheld in Article 23 of the National Constitution, as with the other rights recognized in the Constitution, is not an absolute and is subject to the laws that govern its exercise.

26. On May 15, 1981, in the "Moya, Benito" case, the Supreme Court ruled that the option to leave the country is a right of the individual arrested or moved during a state of siege, that reconciles the common

interest and the exigencies of public order with the guarantees of personal freedom and transfers the responsibility from the National Executive Power when he exercises the exceptional powers conferred upon him in Article 23 of the National Constitution.

The Supreme Court also ruled that in the specific cases submitted to them, it is incumbent upon judges to review the extent to which the President of the Republic has acted within the bounds of reason in exercising the power to arrest conferred upon him in the National Constitution, so as to determine whether the case is in order and whether the restriction imposed is proportionate with the exception. The Supreme Court of Justice declared that the appeal was admissible, ordered that the individual being held should be released, and gave the Executive Power the option to either place that individual on parole or allow him to leave the country.

27. It is appropriate to point out that with respect to the "inquiry into the whereabouts of individuals," the Supreme Court of Justice acknowledges that in processing the writ of habeas corpus the investigation to determine whether the individual is in fact being deprived of his freedom should be exhaustive, which was the opinion upheld in the "Pérez de Smith," "Olleros," and "Machado" cases and others.

In the "Giorgi" case, of February 27, 1979, the Supreme Court of Justice ruled "that habeas corpus requires that the judicial measures be exhausted for the sake of the efficacy and effectiveness of the very purpose of the institution."

28. One question which if not properly understood can be misinterpreted, is the question of military tribunals trying civilians. In the regard, the Supreme Court of Justice of the Nation has stated the following: "It is not unconstitutional to place civilians under military jurisdiction under such exceptional circumstances as those that prompted enactment of laws 21246, 21268, 21272 and 21461, for acts perpetrated between 1975 and 1977." This decision was handed down on June 4, 1981, in the "Pistacchia, Rogelio" case.

29. Moreover, it should be pointed out that the Supreme Court has ruled that the proceedings conducted by the military tribunals adhere to the substantive trial format: indictment, defense, evidence and sentencing. There is also recourse to the Armed Forces High Council and even to the Supreme Court of Justice through a special appeal provided for under Article 14 of Law 48. Therefore, it being legitimate for military tribunals to try civilians because of extraordinary circumstances, the exercise of military jurisdiction does not jeopardize the constitutional guarantees of defense during trial.

30. To provide a greater understanding of this issue, an analysis has been made of a number of judgments handed down by the Supreme Court of Justice. These judgments are the foundation of its principle in this regard. The list of those appears in Appendix I.

31. In those decisions, the Supreme Court of Justice ruled that because of the emergency situation, enactment of exceptional laws that place civilians, under certain circumstances, under the jurisdiction of military courts ("Papetti J. E." case and others) is not unconstitutional. In effect, it is the principle of the self-preservation of the State that gives constitutional validity to standards which, when the domestic tranquility appears to be in serious jeopardy, place civilians who commit crimes related to that emergency situation under the jurisdiction of military tribunals ("De la Torre, M. M.", "Papetti, J. E.", "Saragovi, H. O." cases).

Further the Supreme Court of Justice of the Nation ruled that exceptional laws that, because of an emergency, limit rights protected under the National Constitution should be interpreted restrictively.

In the ruling handed down in the "Mendoza, Carlos on possession of arms," the Supreme Court upheld the validity of bringing civilians before military tribunals for trial when an emergency situation exists and provided that the crimes being prosecuted are related to subversive terrorist activities.

32. The Supreme Court of Justice also upheld the validity of a trial before a military tribunal since the proceedings adhere to the substantive trial format: indictment, defense, evidence and sentencing. It also found such proceedings to be valid inasmuch as judgments handed down by such tribunals can be appealed before the Armed Forces High council and even before the Supreme Court itself.

In the latter instance, the individual filing this appeal must have legal council; the Supreme Court even allows issues to be raised that were not raised in lower courts.

Moreover, for purposes of admitting appeals filed before the Supreme Court by civilians tried under military jurisdiction, the Court has stated that it shall disregard formal objections, so as to preserve defense during trial, particularly when the civilians were not assisted by defense counsel ("Saragovi, H.", "Papetti, J." and "Weinezettel and other for possession of arms, gunpowder, etc.")

33. A reading of the foregoing paragraphs shows an unquestionable correspondence between the political determination of the Argentine Government to ensure the judiciary's independence and effective implementation of this principle in the form of the jurisprudence developed by the Supreme Court of Justice of the Nation. This is complemented by the National Executive's due respect for the decisions adopted by the Judiciary.

III. PRISON SYSTEM

34. As indicated in the Argentine Government's Informative Note of November 13, 1980 (Doc. OEA/Ser.P/AG/doc.1261/80), enforcement of Decree No. 929/80 introduced important changes in the treatment given to

individuals detained for terrorist activities: a visiting schedule, daily recreation, work, reading and pastimes. As a result, the treatment received by such prisoners is largely equivalent to that received by common prisoners.

35. The Federal Prison Service, which is subordinate to the Ministry of Justice, processes any petition filed through the normal channels, whether the petition is filed by the detainee or by other persons or organizations that express an interest in the situation of a detainee and especially those that concern the application of Decree No. 929/80, concerning prison treatment, and in particular, visits, recreation hours, sports and exercises, hours during which the cells are open, newspapers, books and magazines that enter the prison facilities, as well as manual work and shop work.

36. Medical care, permission to take courses, attendance at religious services, meals, in other words, prison treatment as a whole is monitored by the competent judges during their constant jurisdictional visits and by the Ministry of Justice as well.

37. The prison units are visited periodically by representatives of the International Committee of the Red Cross. The Prison Service organizes periodic visits to prison units by members of the diplomatic and consular delegations accredited to Argentina. Diplomatic and consular representatives also conduct individual visits as part of their consular duties.

IV. FREEDOM OF INFORMATION, EXPRESSION AND THOUGHT

38. The National Constitution guarantees freedom of the press as one of the fundamental principles of the Republic of Argentina. At the present time there is no restriction of any kind on information for the national and foreign press. The members of the press have access to all levels of government.

39. The recent phase of the National Reorganization Process involves implementation of a number of the democratization and institutionalization measures that have affected the official information systems. Salient among these are the following:

a. The mass communications media's unrestricted access to government sectors. Journalists can have direct contact with authorities, thereby providing an opportunity to open up channels of information to the national and international press.

b. The existence of press offices in all areas of government; their function is to make possible fluid communications with the community and access to decision-making sources.

c. Government actions are given extensive publicity through communiques and the press's unimpaired access to centers of power, as mentioned earlier. This system makes possible public analysis and often criticism of government actions on the part of the mass communications media.

40. With the situation as it now is in the Republic, there is in practice a free exchange of political opinions of all kinds, stimulated by the Government of Argentina so as to establish a national dialogue on the questions that are of interest to the country as a whole.

41. In some cases, the graphic media (newspapers and magazines) have criticized government acts. The Government, in turn, has demonstrated, through specific incidents, the responsiveness of state agencies to suggestions generated through these criticisms.

Private and state-owned mass communications media (radio and television) provide constant coverage of partisan statements and are careful to include as active participants political leaders and figures representative of broad sectors of the population.

42. Further, through enforcement of the new Radiobroadcasting law, the Government of Argentina has undertaken a process to turn over the official media to private hands, which will reconfirm that freedom of expression is in full force.

V. FREEDOM OF WORSHIP

43. The Republic of Argentina has always been known for its respect and tolerance of beliefs of all kinds. The National Constitution expressly establishes freedom of worship. An eloquent indication of our country's religious mosaic is the list of religions, cults and sects that are authorized to practice throughout the territory. It should be pointed out that there are 1,289 religious institutions listed in the corresponding national register.

44. Yet another example of the guarantees of freedom of worship is a recent judgment handed down by the National Civil and Federal Commercial Court of Appeals which overturned an administrative decision that denied a request for an exemption from military service made by an Argentine citizen, Eliezer Sandhaus, who was at the time studying to be a rabbi. The administrative decision overturned had been based on the fact that the institute where the appellant was studying (Yeshiva Tonchel-Lubavits Central Seminary, Brooklyn, New York, USA) was not listed in the register of religious institutions.

45. In its ruling, the Court held that that institute trained students so that they might serve as ministers of the Jewish faith which, as is common knowledge, is officially recognized in Argentina. As a consequence, it ruled that the appellant qualified for a military exemption.

46. DISAPPEARANCES

As for individuals denounced as having disappeared during the period of virtual internal war and whose fate is unknown, the previous informative documents have already stated that this is something from our past; the individual responses are a matter of concern to the Government and to the individuals affected. It is also true that that and other aspects of the situation that the country experienced have been used as a political tool with which to confront the Argentine Government, while dodging the issue of the armed attack of subversive terrorism which put our society on the verge of chaos. Once again, the member countries must be told that those interested in such cases will find their answer in the evolution of political and social life in Argentina, which is the only context in which they will find a satisfactory solution.

47. It must be added that in 1981, when denunciations of alleged violations were made--a situation that is inevitable in a country of 28 million people--, the facts were clarified in short order, and the individuals whose alleged disappearance had been denounced were located. This is the product of the peace that prevails in the country following the difficult period Argentina experienced.

48. ARRESTS BY ORDER OF THE NATIONAL EXECUTIVE POWER: Document OEA/Ser.P/AG/CP/doc.276/81 (Second Informative Note from the Government of Argentina) states the following: "Pending cases continue to be reviewed periodically to facilitate a decision in favor of the parties concerned using one of the existing mechanisms and seeking solutions that will reconcile the individual situations with the overall needs that the Government must see to..."

49. In 1981, events have confirmed these statements. The following statistics are the best indication of this.

	ARRESTS	RELEASES
From 11/6/74 (Declaration of the States of Siege) through 12/31/77	8.285	3.968
1978	386	1.069
1979	54	842
1980	12	543
From 1/1/81 to 8/31/81	0	199
TOTAL	8.737	6.621

50. The difference between the number arrested by order of the National Executive Power and releases does not mean that all are being deprived of their freedom (confined within some prison establishment), as the following table shows:

	As of 8/31/81
Being held in prison establishments	840
Options grantes	890
Under arrests	2
On parole	152
Expelled from the country	232

51. It is advisable to point out that thus far this year, the release of 199 individuals arrested by order of the National Executive Power has been ordered and carried out, while the pending cases continue to be analyzed in an effort to find solutions that reconcile individual circumstances with the general interest.

VI. CONCLUSIONS

52. It has been the intention of the Government of Argentina to use this note to continue its dialogue with the member countries of the OAS to inform them of the present situation in Argentina and its progress toward an effective and stable democracy within a positive framework of respect for and promotion of human rights.

In so doing, the Government of Argentina pays particular deference to the interest demonstrated by friendly countries with respect to specific cases and within the context of bilateral relations. At the same time it is cooperating with international agencies with competence in this sector and has constructive dialogue with human rights associations and centers that demonstrate a clear intention to cooperate with the State; it also receives numerous visits made by leading public and private who wish to acquaint themselves with the situation in Argentina. This has helped to clarify the situation of human rights, thereby purging Argentina's image of the distortions introduced by those sectors political purposes are in no way related to genuine promotion of human rights.

53. Self-styled human rights groups have complete freedom of action in Argentina. Those sectors use the mass communications media extensively and their spokesmen travel both within and outside the country to convey their points of view.

54. The points made in this third Informative Note confirm the closing statements made in Document OEA/Ser.P/AG/CP/doc.276/81 (Second Informative Note) to the effect that the Argentine Government has

consistently shown its willingness to cooperate with the states, international orgnizations, and sectors interested in effective protection of human rights, provided that the relationship between the parties is governed by the standards and procedures appropriate to promoting those rights in an objective manner and in good faith.

APPENDIX No. I TO THE
INFORMATIVE NOTE OF SEPTEMBER 30, 1981

APPENDIX I

- QUIROGA RAMPOLDI, Nicolás
- PAPETTI, Jorge; HENNECKENS, Sergio; AYALA, Ramón and others
- PITES, Alberto A.
- SARAGOVI, Horacio Oscar
- de la TORRE, Marcelo M. SEGARRA, N. and ANTELO, Patricia B.
- ARANCIBIA CLAVEL, Enrique
- MANASSERO and others
- WEINZATTEL, Carlos and others
- DIESSLER, Alberto
- MENDOZA, Carlos A.
- ALTOBELLO, Enzo Leonardo
- DIAZ RODRIGUEZ, Fco Manuel
- DELGADO, Oscar and others
- MENDEZ, Jorge A.
- ENGSTROM, Juan
- PISTACCHIA, Rogelio Vicente
- GARRAZA, Pedro José
- GONZALEZ, Julio Oscar and others
- PEREZ RISSO, Cárlos E.
- CARAVELLO, José Carlos